



## 22 CFR Chapter I

[Public Notice 11985]

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### Employment-Based Preference Immigrant Visa Final Action Dates and Dates for Filing for El Salvador, Guatemala, and Honduras

**AGENCY:** Department of State.

**ACTION:** Interpretation of certain statutory provisions.

**SUMMARY:** The Department of State (“Department”) is issuing this document to state its interpretation of certain provisions in the Immigration and Nationality Act (INA) regarding the availability of immigrant visa numbers in categories subject to an annual numerical limit. To ensure that Department practice is consistent with these INA provisions, future *Visa Bulletins*, beginning with the April 2023 *Visa Bulletin*, will reflect this interpretation with respect to the availability of employment-based preference visas for applicants from the Northern Central American countries of El Salvador, Guatemala, and Honduras (“NCA Countries”).

**DATES:** March 28, 2023.

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#### SUPPLEMENTARY INFORMATION:

##### I. Background

Applicants for immigrant visas subject to numerical limitations prescribed in sections 201-203 of the INA, 8 U.S.C. 1151-1153, are generally chargeable to their country of birth. INA 203(e), 8 U.S.C. 1153(e), governs the order in which immigrant visas in the family-sponsored and employment-based preference categories under INA 203(a)-(b), 8 U.S.C. 1153(a)-(b),

respectively, are allocated, and requires that visas in these categories be made available in the order in which the associated petition is filed.

INA 202(a)(2), 8 U.S.C. 1152(a)(2), imposes a “per country” limit of seven (7) percent of the total number of available family-sponsored and employment-based preference immigrant visas each fiscal year to nationals of individual foreign states. If the Department determines that preference visa issuances to nationals of a particular country will exceed the per-country limit, that country is identified in the *Visa Bulletin* as “oversubscribed” and INA 202(e), 8 U.S.C. 1152(e), requires that visas in each preference category must be pro-rated to ensure distribution across all preference categories. Individual family-sponsored and employment-based preference categories are also deemed “oversubscribed” when worldwide demand exceeds the number of immigrant visas available in those categories. Final action dates are listed in the *Visa Bulletin* when countries and visa categories are oversubscribed, and immigrant visas in categories with final action dates are available only to applicants with priority dates earlier than the listed final action date.

The EB-4 category consists of special immigrants as defined in the INA, including certain religious workers, certain current and former U.S. Government employees abroad, certain officers and employees of international organizations, and certain special immigrant juveniles (SIJs). *See* sections 203(b)(4) and 101(a)(27) of the INA, 8 U.S.C. 1153(b)(4), 1101(a)(27).

## **II. Discussion of the Change Reflected in the April 2023 *Visa Bulletin***

The Department seeks to clarify that the INA permits prorated allocation of available visas within an employment-based preference category to nationals from an individual country only when family-sponsored and employment-based preference visa demand from that country will exceed its per-country limit under INA section 202(a)(2), 8 U.S.C. 1152(a)(2). Consistent with this interpretation, the Department is no longer assigning separate final action and filing dates for individuals chargeable to any of the NCA Countries in the EB-4 category and individuals chargeable to these three countries are now subject to the dates in the column headed

“All Chargeability Areas Except Those Listed” (referred to herein as “ROW,” meaning the rest of the world). The Department is required to make this change to bring Department practice, as reflected in the *Visa Bulletin*, into compliance with these INA provisions. As a result of this change, there is no longer a need for a separate column for the NCA Countries in the employment-based preference “Final Action Dates” and “Dates for Filing” charts in the *Visa Bulletin*.

Specifically, INA 202(a), 8 U.S.C. 1152(a), makes clear that the per-country limit, which is implemented by setting final action dates for a country in the *Visa Bulletin*, is triggered only when preference immigrant visa demand from a country will exceed seven percent of the total number of preference visas made available in INA section 203(a)-(b), 8 U.S.C. 1153(a)-(b); that is, seven percent of the total number available for all family-sponsored and employment-based preference immigrant visas available worldwide.

This change corrects misapplication of the law in prior *Visa Bulletins*, beginning with the May 2016 *Visa Bulletin*, which added a separate column to the “Final Action Dates for Employment-Based Preference Cases” table, showing that EB-4 applicants chargeable to the NCA Countries were assigned an EB-4 final action date separate from the ROW column and these three countries were listed as “oversubscribed” and subject to the pro-rating provision at INA 202(e)(3), 8 U.S.C. 1152(e)(3). The May 2016 *Visa Bulletin* explained that “extremely high demand” in the EB-4 category (including the EB-4 subcategory for Certain Religious Workers (SR)) for applicants from the NCA Countries required implementation of final action dates in the EB-4 category for these countries. EB-4 final action dates were thus established for these three countries since May 2016 based on their high demand for EB-4 visas. The same approach was reflected in subsequent *Visa Bulletins* and in the corresponding table with “Dates for Filing of Employment-Based Visa Applications,” beginning with the October 2017 *Visa Bulletin*. However, that contravenes the Department’s current interpretation of the statutory prerequisite for when a country can be deemed oversubscribed and allocation of preference visas can be pro-

rated: that the INA provision on pro-rating is based on a country's demand for more than seven percent of *all* preference visas, not one subcategory.

As none of the NCA Countries are expected to exceed the per-country limit under INA 202(a)(2), 8 U.S.C. 1152(a)(2), there is no basis under the INA to set final action dates and dates for filing for employment-based preference visas that are specific to those countries.

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